

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** THOMAS C. POULSON

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Appeal No. 98-0683  
Application 08/505,853<sup>1</sup>

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ON BRIEF

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Before COHEN, MEISTER and ABRAMS, **Administrative Patent Judges.**

MEISTER, **Administrative Patent Judge.**

**DECISION ON APPEAL**

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<sup>1</sup> Application for patent filed July 24, 1995. According to appellant, this application was styled as a "SUB" for application 08/209,941, filed March 11, 1994 (abandoned on December 23, 1994).

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Thomas C. Poulson (the appellant) appeals from the final rejection of claims 1-11, the only claims present in the application.

We REVERSE.

The appellant's invention pertains to a motor vehicle having a pair of sun visors, a rear view mirror and an auxiliary sun visor that is attachable to the front surface of the rear view mirror for the purpose of bridging the space between the pair of sun visors. Independent claim 1 is further illustrative of the appealed subject matter and a copy thereof may be found in the appendix to the brief.

The references relied on by the examiner are:

Short	2,549,395	April 17, 1951
Viertel et al. (Viertel)	4,477,116	Oct. 26, 1984
Lystad	4,570,991	Feb. 18, 1986
Gleason	5,477,629	Dec. 26, 1995
Hou	5,509,713	Apr. 23, 1996

Claims 1-8, 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Short in view of Lystad and either Gleason or Hou.

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Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Short in view of Lystad and either Gleason or Hou as applied to claim 8 above, and further in view of Viertel.

The rejections are explained on pages 5 and 6 of the answer. The arguments of the appellant and examiner in support of their respective positions may be found on pages 3-12 of the brief and page 7 of the answer.

#### **OPINION**

As a preliminary matter, we observe that the preamble of independent claim 7 is inconsistent with the body of that claim. That is, the preamble sets forth "[a]n auxiliary sun visor" whereas the body of the claim, in addition to setting forth details of the auxiliary sun visor, **also** sets forth details of a motor vehicle (e.g., "complementary attaching means . . . covering the **entire** **said front surface of said rear view mirror**" (emphasis added)). Accordingly, we interpret independent claim 7 to be directed to the combination of an auxiliary sun visor and a motor vehicle which includes a rear view mirror.

Both of the above-noted rejections are bottomed on the examiner's view that:

It would have been obvious to provide in Short Sr. attaching means as taught by Lystad for an auxiliary visor in order to secure in position and continuous attaching means as taught by either Gleason or Goldstein [sic, Gleason or] or Hou as stated above. Use of the front surface of the rear view mirror is deemed to be an obvious expedient to one of ordinary skill in the art as the position disclosed in Short Sr. has the auxiliary visor in close proximity to the mirror as seen in figure 5, hence the mirror is the most obvious location for additional securement. [Answer, pages 5 and 6.]

We do not support the examiner's position. Short discloses an auxiliary sun visor which is used to span the space between two conventional sun visors in a motor vehicle. Short's auxiliary sun visor is adapted to be suspended from the arm or stud which supports the vehicle's rear view mirror 16 and, to this end, Short provides the auxiliary sun visor with an insertion slot 11 having apertures 12 spaced there along in order that the stud or arm may slipped through the slot and frictionally engage a selected aperture. While Lystad shows hook and loop means for securing a sun visor, the sun visor (which is pivoted between operative and non-operative positions) and interior trim of the vehicle are

provided with relatively small "buttons" having hook and loop attaching means thereon for the purpose of securing the sun visor in a selected position. As to Gleason and Hou, the examiner has relied on these references to show "continuous" attaching means. Gleason, however, merely teaches that the entire outer surface of a hat or cap (e.g., the cap 100 in Fig. 8), including the bill or visor, may be provided with a hook or loop attachment means in order that display items 22 (such as logos) may be releasably secured thereto. Hou, while teaching that one face of a rubber strip 2 may be entirely or "continuously" covered with a hook or loop attaching means, the rubber strip is in turn secured to the interior trim of a vehicle and is used to releasably secure a sunshade to one of the vehicle's side windows.

There is simply nothing in the combined teachings of Short, Lystad and either Gleason or Hou which would fairly suggest providing "complementary attaching means substantially covering one broad surface of said panel and substantially covering **the entire front surface** of said rear view mirror" (emphasis added) as independent claims 1 and 7 expressly require. In an apparent attempt to overcome this deficiency, the examiner has taken the position that providing substantially the entire front face of the

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rear view mirror with an attaching means is an "obvious expedient," we must point out that obviousness under § 103 is a legal conclusion based on **factual evidence**. *In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The mere fact that Short attaches the auxiliary sun visor in "close proximity" to the front face of the rear view mirror (i.e., on the supporting arm or stud 15) does not serve as a sufficient factual basis for establishing the obviousness of providing an attaching means that substantially covers the entire front face of the rear view mirror as claimed. *See In re GPAC, Inc.*, 57 F.3d 1573, 1582, 35 USPQ2d 1116, 1123 (Fed. Cir. 1995) and *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968).

With respect to claim 9, we have carefully reviewed the teachings of Viertel but find nothing therein which would overcome the deficiencies of Short, Lystad, Gleason and Hou that we have noted above.

The rejections of claims 1-11 under 35 U.S.C. § 103(a) are reversed.

**REVERSED**

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IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
JAMES M. MEISTER	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
NEAL E. ABRAMS	)	
Administrative Patent Judge	)	

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John E. Reilly  
1120 Lincoln Street  
Suite 1500  
Denver, OH 80203